

REMARKS

Applicants respectfully request reconsideration and allowance of the subject application. Claims 51-76 are pending in the application.

Applicant's remarks after Final are appropriate under 37 C.F.R. §1.116 because they address the Office's remarks in the Final Action pertaining to the newly cited Sathe reference, and thus could not have been presented earlier. In addition, the remarks should be entered to place the case in better form for appeal.

35 U.S.C. §103 Claim Rejections

Claims 51-76 are rejected under 35 U.S.C. §103(a) as being unpatentable over Applicant's Background of the subject application, which is described on pages 1-7 of the specification (hereinafter, "Background"), in view of U.S. Patent No. 5,617,417 to Sathe et al. (hereinafter, "Sathe") (*Office Action* p.2).

Claim 51 recites a content provider comprising:

a transmitter, responsive to the server, to transmit a portion of the content over a second network, the portion of the content being transmitted in addition to the content which is served to the local service provider via the first network, the second network being independent from the first network and providing additional bandwidth so that the transmitter can serve the portion of the content to the local service provider in an event that the portion of the content is not served via the first network within a designated time period.

Applicant's Background and/or Sathe do not teach or suggest a transmitter which transmits a portion of the content over a second network, the portion of the content being transmitted in addition to the content which is served to the local service provider via the first network, as recited in claim 51.

1 Sathe only describes a *single communication network* for communication
2 over T1 communication links (*Sathe* col.4, lines 14-20). The Office contends that
3 Sathe teaches a first network in the form of a terrestrial network and second
4 network in the form of a satellite network, and that a portion of data is transmitted
5 over the second network in addition to the first network (*Office Action* p.3).
6 Applicant disagrees because Sathe only discloses a single network of
7 T1 communication links. At most, Sathe describes that if one or more
8 terrestrial T1 communication links fail during communication, then satellite
9 T1 communication links of the same network can be used (*Sathe* col.7, lines
10 51-56). Contrary to Applicant's first network and independent second network
11 recited in claim 51, the satellite T1 communication links in Sathe are links of the
12 single network.

13 Sathe also clearly does not teach transmitting "a *portion* of the content over
14 a second network, the portion of the content being transmitted *in addition to* the
15 content which is served to the local service provider via the first network," as
16 recited in claim 51 (emphasis added). Sathe instead describes sending all of the
17 data from a failed communication link to a satellite T1 communication link and
18 states that the "failed T1 terrestrial communication links *are replaced* with satellite
19 T1 communication links" (*Sathe* col.7, lines 54-56). Rerouting all of the data over
20 another or different link, as described in Sathe, is not a basis to reject transmitting
21 a "portion" of the content over a second network "in addition to the content" being
22 served by a first network, as recited in claim 51. Further, there is no discussion in
23 the Background of the subject application that would suggest this feature.

24 Sathe also fails to disclose transmitting a portion of the content to the
25 satellite network "in an event that the portion of the content is not served via the

1 first network within a designated time period.” Instead, Sathe describes replacing
2 a terrestrial link with a satellite link of the single network only when the terrestrial
3 link actually fails (*Sathe* col.7, lines 54-56). Sathe also teaches away from a
4 second network to transmit a portion of the content after a designated time period,
5 as recited in claim 51. To the contrary, Sathe handles communication time delay
6 with an inbound delay compensation buffer that permits delay compensation
7 among the various communication links of the single network (*Sathe* col.6, lines
8 6-9). By waiting for a communication link to fail before rerouting the link’s entire
9 data to an alternate communication link, and then using a delay buffer to
10 compensate for a communication delay of the data, Sathe teaches away from
11 Applicant’s solution of transmitting a portion of the data to a second network if the
12 content is not served via the first network “within a designated time period.”
13 Where rerouting the data in response to a communication link’s *failure* creates the
14 need for a delay buffer in Sathe, Applicant’s designated time period solution
15 obviates this need.

16 Finally, the Background-Sathe combination also fails to teach or suggest the
17 second network being independent from the first network and providing additional
18 bandwidth so that the transmitter can serve the portion of the content to the local
19 service provider in an event that the portion of the content is not served via the
20 first network within a designated time period, as recited in claim 51.

21 The Office contends that Applicant’s discussion regarding prior problems
22 with the dissemination of continuous data in the Background teaches or suggests
23 this limitation (*Office Action* p.3). Applicant disagrees because the Background
24 description simply acknowledges that the dissemination of continuous data over
25 the Internet is plagued with latency problems due to limited bandwidth

1 (Specification p.2, lines 16-21). There is no disclosure or suggestion of providing
2 a transmitter which transmits a portion of the content to the local service provider
3 over a second network in an event that the portion of the content is not served via
4 the first network within a designated time period, as recited in claim 51. Applicant
5 submits that the Office is merely using the Background to modify or presume
6 features of Sathe that do not exist, and such use of the Background constitutes
7 improper hindsight reconstruction.

8 Accordingly, independent claim 51 along with dependent claims 52-56 are
9 allowable over the Background-Sathe combination for at least the reasons
10 described above. Applicant respectfully requests that the §103 rejection be
11 withdrawn, and that claims 51-56 be allowed.

12
13 Claim 57 recites a content provider comprising "a high-speed,
14 high-bandwidth network" and "a broadcast satellite network to communicate the
15 content from the server to the local service provider, the broadcast satellite
16 network being independent from the high-speed, high-bandwidth network."

17 Applicant's Background and/or Sathe do not teach or suggest claim 57 for
18 at least the reasons discussed above in response to the rejection of claim 51.
19 Specifically, the Background-Sathe combination does not disclose *two independent*
20 *networks*, as described in claim 57. Applicant again submits that the Office is
21 using the Background to modify or presume features of Sathe that do not exist,
22 which constitutes improper hindsight reconstruction.

23 Accordingly, independent claim 57 along with dependent claims 58-63 are
24 allowable over the Background-Sathe combination for at least the reasons
25

1 described above. Applicant respectfully requests that the §103 rejection be
2 withdrawn, and that claims 57-63 be allowed.

3
4 Claim 64 recites a content provider comprising:

5 a transmitter, responsive to the server, to transmit a portion of the
6 video content over a second network, the portion of the video
7 content being transmitted in addition to the video content which is
8 served to the local service provider via the first network, the second
9 network being independent from the first network and providing
10 additional bandwidth so that the transmitter can serve the portion of
the video content to the local service provider in an event that the
portion of the video content is not served via the first network within
a designated time period.

11 As described above in the response to the rejection of claim 51, the
12 Background and/or Sathe does not teach or suggest a transmitter which transmits a
13 portion of the video content over a second network, the portion of the video
14 content being transmitted in addition to the video content which is served to the
15 local service provider via the first network, as recited in claim 64.

16 Further, the Background-Sathe combination also fails to teach or suggest
17 the second network being independent from the first network and providing
18 additional bandwidth so that the transmitter can serve the portion of the video
19 content to the local service provider in an event that the portion of the video
20 content is not served via the first network within a designated time period, as
21 recited in claim 64.

22 Accordingly, independent claim 64, along with dependent claims 65-69, are
23 allowable over the Background-Sathe combination for at least the same reasons as
24 discussed above in response to the rejection of claim 51. Applicant therefore
25

1 respectfully requests that the §103 rejection be withdrawn, and that claims 64-69
2 be allowed.

3
4 Claim 70 recites a content provider comprising "a broadcast satellite
5 network to communicate the video content from the server to the local service
6 provider, the broadcast satellite network being independent from the high-speed,
7 high-bandwidth network."

8 As described above in response to the rejection of claims 51 and 57, the
9 Background and/or Sathe do not teach or suggest a broadcast satellite network
10 being independent from the high-speed, high-bandwidth network, as recited in
11 claim 70.

12 Accordingly, independent claim 70 along with dependent claims 71-76 are
13 allowable over the Background-Sathe combination for at least the same reasons
14 discussed above in response to the rejection of claims 51 and 57. Applicant
15 therefore respectfully requests that the §103 rejection be withdrawn, and that
16 claims 70-76 be allowed.

Conclusion

Pending claims 51-76 are in condition for allowance. Applicant respectfully requests reconsideration and issuance of the subject application. If any issues remain that preclude issuance of this application, the Examiner is urged to contact the undersigned attorney before issuing a subsequent Action.

Respectfully Submitted,

Dated: Aug. 17, 2005

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